

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 3025 OF 2004

SHRI ABA HARI CHAVAN .. PETITIONER

Versus

SHRI LAXMAN K. CHAVAN & ORS. .. RESPONDENTS

Mr. Mr. C. G. Gavnekar for petitioner

Mr. T. S. Ingale for R 1, 3 to 5.

CORAM:-SMT. RANJANA DESAI, J.

DATED:-7-3-2005

P.C.

The petitioner is the original plaintiff. The petitioner has challenged in this court order dated 3rd February, 2004 passed by the Civil Judge, Junior Division, Ichalkaranji, rejecting the plaintiff's application for amendment. By the amendment the plaintiff wanted to introduce in the

prayers relief of declaration and perpetual injunction against defendants 3 to 5 in respect of sale transaction dated 30th December, 1997.

2. According to the plaintiff, defendant 1 has sold the suit property during the pendency of the suit to defendants 3 to 5. Hence the sale transaction which defendant 1 has entered into with defendants 3 to 5 is void and illegal. The plaintiff claims to be the owner by adverse possession. Initially the suit against the defendant 1 was only for a declaration that the plaintiff is owner by adverse possession.

3. On 9th January, 1998 application Exhibit 33 was filed by the plaintiff for amending the plaint. Defendant 3 was added by this amendment. It was the contention of the plaintiff that by the disputed sale transaction dated 30th December, 1997 defendant 3 had not acquired any rights. Again on 2nd February, 1998, the plaintiff filed another application being Exhibit 37 and names of defendants 4 and 5 were added as purchasers. That application was allowed on 4th February, 1998. Thereafter after about five years i.e. on 8th October, 2003, the plaintiff filed the present application for amendment. This amendment application having been rejected the plaintiff has approached this court.

4. I have heard at some length Mr. Gavnekar, learned counsel for the petitioner.

5. Mr. Gavnekar contended that initially defendants 3 to 5 had not filed written statement. It is only on 10th June, 2003 that the written statement was filed and, therefore, on 8th October, 2003 the application for amendment was made. He submitted that in the circumstances, the trial court was wrong in holding that there is any delay in filing the amendment application. The learned counsel relied on **Pankaja & Anr. v. Yellappa (D) by L.Rs. & Ors., A.I.R. 2004 S.C. 4102** and contended that the power of the court to allow application for amendment is unfettered and the amendment can be allowed even if it is out of limitation.

6. There can be no doubt that the court can allow amendment at any stage provided the facts of the case so require. Even an amendment application which is out of limitation can be allowed. In **Pankaja's case (supra)** the Supreme Court has reiterated the same principle and has further added that discretion in such cases depends on the facts and circumstances of the case and the jurisdiction to allow an amendment being discretionary the same will have to be exercised in a judicious evaluation of the facts and circumstances in which the amendment is sought. It was further observed that if the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straight jacket formula for allowing or disallowing an amendment of pleadings. Each case depends

on the factual background of that case.

7. The present case will have to be examined in the light of the above observations of the Supreme Court. The facts of the case indicate that the plaintiff was aware about the disputed sale transaction long back. On 9th January, 1998 the plaintiff filed an application for amendment which was granted and the plaintiff added defendant 3 to the suit. Again on 2nd February, 1998 he amended the plaint and added defendants 4 and 5 as purchasers. The plaintiff should have carried out the consequential amendment at that stage. After five years after the trial has commenced the plaintiff has moved the present amendment application. I have been shown order dated 28/1/2005 passed by the trial court, where the trial court has observed that the plaintiff has failed to adduce evidence though he was given sufficient opportunity. The trial court has further ordered the suit to proceed further without his evidence. Against this background the reliance placed by the trial court on Order VI Rule 17 of the Code of Civil Procedure appears to me to be apt. Application for amendment could have been allowed if there was anything to show that in spite of due diligence the plaintiff could not have raised the matter before the commencement of the trial. The plaintiff cannot raise his case this high. Hence, in my opinion, the application has been rightly rejected. No interference is necessary. The petition is rejected.

8. Mr. Gavnekar urged that all contentions may be kept open and if the plaintiff's suit is dismissed and if he carries an appeal, he may be permitted to agitate them in the appeal.
9. All contentions of the plaintiff are kept open and, if the suit is dismissed and the plaintiff carries an appeal he will be entitled to agitate all the contentions in the appeal.